1403

SUPREME COURT OF THE UNITED STATES.

No. 282.

THE UNITED STATES, APP'L'TS,

vs.

VICENTE GOMEZ ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

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INDEX.

	Original.	Print.
Record of the proceedings in commission	1	1
Submitted, taken under advisement, and decided	2	1
Petition	3	2
Deposition of Manuel Castro	3	2
Original grant "A., P. L., exhibit to deposition of Man'l Castro"	7	4
Translation of same	9	5
Affidavit and notice	11	6
Opinion of the board	13	7
Decree	13	7
Certificate of secretary	15	8
Notice of appeal to dist. court	17	8
Petition of appellant	17	9
Answer	18	9
Summons	19	10
Deposition of J. M. Bonillo	21	11
Decree of dismissal	22	11
Notice and motion to vacate order of dismissal	23	12
Order reinstating case and granting leave to take testimony	24½	13
Deposition of R. C. Hopkins	25	13
Traced copy of original espediente and grant	29	15
Certificate of surveyor general to correctness of same	34	16
Order granting leave to take testimony	35	17
Deposition of Wm. Mathews	36	17
Argued and submitted	40	19
Deposition of J. B. R. Cooper	41	19
Substitution of David Jacks	44	21

	Original.	Print.
Deed to same from heirs of Gomez	45	21
Order for substitution	48	23
Decision of confirmation rendered	49	24
Brief for claimants	50	24
Opinion (referred to in same)	53	26
Decree	62	30
Appeal to the Supreme Court of the U. S.	63	31
Certificate of U. S. attorney	64	31

1007

1 *Transcript of the proceedings in case No. 679, Vicente Gomez et al., claimants, vs. The United States, defendants, for lands in Monterey county.*

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this first day of March, Anno Domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Vicente Gomez *et al.*, for the place named, land in Monterey county, was presented, and ordered to be filed and docketed with No. 679, and is as follows, to wit:

(*Vide* page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *January 2d*, 1855.

Case No. 679, Vicente Gomes *et al.*, for the place named "El Tucho," was ordered to be placed at the foot of the 4th class of cases on the trial docket.

SAN FRANCISCO, *January 16th*, 1855.

Case No. 679 was submitted under the rule of March 21st, 1854.

SAN FRANCISCO, *January 30th*, 1855.

In the same case the counsel for the claimants filed the following affidavit, to wit:

(*Vide* page 11 of this transcript.)

And the prayer of petitioner therein was taken under advisement by the board.

SAN FRANCISCO, *February 2d*, 1855.

In the same case, the deposition of Manuel Castro, a witness in behalf of the claimants, taken before commissioner Peter
2 Lott, was filed.

(*Vide* page 3 of this transcript.)

SAN FRANCISCO, *February 6th*, 1855.

In the same case, Commissioner Alpheus Felch delivered the opinion of the board upon the prayer of the petitioner, filed on the 30th January last, granting the same; whereupon it was ordered, that the case be placed at the foot of the trial docket.

SAN FRANCISCO, *March 13th*, 1855.

Case No. 679 was submitted without argument, and taken under advisement by the board.

SAN FRANCISCO, *March 27th*, 1855.

In the same case, Commissioner S. B. Farwell delivered the opinion of the board rejecting the claim.

(*Vide* page 13 of this transcript.)

And the following order was made, to wit:

(*Vide* page 14 of this transcript.)

3 *Petition.*

Before the commission to ascertain and settle land claims in California, Vicente Gomez and Gomez, children and heirs of the late Don Joaquin Gomez, give notice that they claim a tract of land in said State, in the extent of fifteen hundred varas square, in a place called "El Tucho," situated on the plains of the river Salinas, in the county of Monterey.

Said land was granted by Don Ramon Estrada, prefect of the first district of California, on the 28th day of November, 1843, to the said Don Joaquin Gomez, and by his death descended to the present claimants.

The original grant of said land and a translation of the same are herewith filed as a part of this petition.

By their attorneys.

JONES, CROCKET & BAKER.

Filed in office March 1st, 1853.

GEO. FISHER, *Secretary.*

Recorded in volume 2 of petitions, pages 60, 61.

GEO. FISHER, *Secretary.*

Deposition of Manuel Castro.

UNITED STATES OF AMERICA.

State of California, ss:

SAN FRANCISCO, *January 31st*, 1855.

This day came before Peter Lott, commissioner for taking testimony before the board of United States land commissioners in said State, Manual Castro, a witness for claimant in case number 679 on the docket of said board, Vicente Gomez, claimant, and said witness being sworn, deposed in Spanish, which is interpreted as follows:

The United States associate land agent is present.

4 *Questions by Mr. Packard, for claimant.*

1st question. What is your name, age, and residence?

Answer. My name is Manuel Castro; my age is thirty-three years; and my residence in Monterey, California.

2d question. Are you acquainted with the tract of land claimed in this case, being a part of the land called Tucho? If yea, state what you know of the boundaries and occupation of the said tract claimed.

Answer. I know said tract claimed by Vicente Perfecto Gomez in this case. My family own lands adjoining it in which I have an interest. I have often been on the tract claimed.

It is bounded on the east by lands of Thomas Cole, whose fence was built on that line; on the west by lands belonging to myself and my family, where are the remains of an old fence; on the south by the river Salinas; and on the north by the road which leads from the house and lands of Prudencio Espinosa, to the lands of Trinidad Espinosa.

This tract is in a square form, embracing 1,500 varas across each way, a little more or less. It lies in a plain and has no natural boundaries, except the river on one side.

This tract was occupied in 1843 by Juan Higuna, the mayor domo of Joaquin Gomez. He was there and had men employed in cultivating the place. He had a wooden house in which he and the hands lived, and also a corral, and fences, and oxen, horses, and cows. The place was occupied and cultivated for said Gomez, who used to go there sometimes to look after the place. I have not been on it since 1843.

3d question. Look at the document now shown to you, marked A, P. L., as an exhibit in this deposition, and heretofore filed in this case; and state whether you know the signatures therein of José Joaquin Gomez and José R. Estrada? If yea, state your means of knowledge, and also whether said signatures are genuine?

Answer. I am acquainted with the handwriting of both the persons named. I have seen them both write, and their signatures, respectively, on this document are genuine. I was said Estrada's secretary, and as such wrote the body of this document myself.

Cross-examined by U. S. associate land agent.

1st question. How do you know this land is bounded as you have described?

Answer. I was clerk in the office of the Prefect Estrada who made the grant, and I saw the petition of Gomez, which called for the Rio de Salinas, and the lands of Cole and of the Castros as bounded; and the old mayor domo of Gomez, one José Maria Guternez, told me the road was the other boundary at the time when he lived on the land; and Juan Heguna, when he afterwards came to live there, told me the same thing.

2d question. How do you know the quantity of land in this tract? Have you ever measured it or seen it measured?

Answer. I have never measured it nor seen it measured; but from 1838 to 1843, during part of which time I lived adjoining it, and carried on the farm of the Castros, I passed very often over this land in various directions, and I judge, from the view of the eye and my familiarity with the land in question, that it is about 1,500 varas square. It may be a little more or less.

3d question. How do you know Juan Heguna was mayor domo of Joaquin Gomez? and state who built the house of which you speak, and when?

Answer. He was there managing the stock and property of Gomez and he and Gomez had both told me that he was mayor domo..

I do not know who built the house or when it was built. I saw it there in 1843, and it looked like an old affair.

It was not much of a house. It was built in such a way as to afford a protection or shelter to the man living there, though it was a temporary house made of poles and brush. Since reflecting, I do not remember whether it was in the latter part of 1843 or early in 1844 that I saw Heguna there.

MANUEL CASTRO.

Subscribed and sworn to before me on this 31st day of January, A. D. 1855.

PETER LOTT, *Commissioner.*

Filed in office February 2d, 1855.

GEO. FISHER, *Secretary.*

7 A.

Original Grant, A. P. L.—Exhibit to the Deposition of Manual Castro.

Sello cuarto, dos reales.

Habilitado del puerto de Monterey en el departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

MANUEL CASTANARES.

MICHELTORENA.

[SELLO.]

Monterey, No'bre 28 de 1843. Informe el juez del pueblo del Refugio si las tierras que se pretenden en esta instancia se hallan baldias y se pertenecien a algun particular.

ESTRADA.

Señ'r Prefecto del 1st Distrito:

José Joaquin Gomez, Mejicano por nacimiento y vecino del pueblo de S'n Juan Bautista en este departamento ante la justificacion de Vs. Con el debido respeto y como mas haya lugar en derecho dijo. Que no teniendo el rancho que paseo dremas utiles para siembras y portal motivo seme permitio el hacer estas en trenos ajenos ya por arendamantos ò ya por prestemos he procurado con empeño hallar un corto.

Espacio que sea de mi propiedad y sabiendo que en un paraje llamado el Tucho, en la Vega del Rio hay una suerte de tierra de mil quinientas varas, colindando con el terreno de Don Manuel Castro y con el del estrangero Tomas Call util para el objecto propuesto que esta valdio y sin cultivo ni ocupacion por alguno pideá V. S. se sirva concedermela en propiedad o tomadas los informes que era convenientes dar el suyo á mi favor para que por el acceda el E. S. gobernador á mi peticion.

8 P. T. a V. S. suplico se sirva proveer como pido que en ella reciber gracia y justicia.

MONTEREBY, *No'bre* 27 *de* 1843.

JOSE JOAQUIN GOMEZ: Refujio 1st de Dic'bre de 1843. Las tierras que se solicitan son de dos neofitas Carmelenos se las concedio Don David Espense el año de mil ochocientos cuarenta, pero ellos no las han trabajado y el uno bibe en Santa Cruz y el atro en el pueblo de San José con estas consimientos puede V. S. ordenas lo que juste.

JOSE JOAQUIN G. BUELNA.

José Ramon Estrada, prefecto del primera distrito del departamento de las Californias.

Habiendo visto el informe que antecede por el que consta hallarse baldia ó desocupada la suerte de tierra que se pretende usando de las facultades que la conferen las leyes concedo en propiedad á Dn. José Joaquin Gomez la misma suerte de tierra. Devuelva sele el presente para su resjuardo.

Monterey, D'bre 4 de 1843.

JOSE R. ESTRADA.

En consecuencia del antenor de creto el juez del pueblo del Refujio le señalara á Dn. José Joaquin Gomez las varas de trenas concedidas respetando las linderos que indica en su solicitud.

Monterey, D'bre 7 de 1843.

Filed in office March 1st, 1853.

GEORGE FISHER, *Secretary.*

9 B.

[Translation.]

Fourth seal, two reals.

Provisionally qualified by the maritime custom-house of the port of Monterey in the department of the Californias, for the year one thousand eight hundred and forty-three.

MANUEL CASTANARES.

Mr. Prefect of 1st District.

MICHELTORENA.

[SEAL.]

Monterey, November 28th, 1843. Let the judge of the town of Refugio report whether the lands solicited in this petition are vacant, and whether they belong to any private individual.

ESTRADA.

I, José Joaquin Gomez, Mexican by birth, residing in the town of San Juan Bautista, in this department, before your worship with due respect and in form of law say, that the rancho which I possess having no useful land for tillage, and for this reason it being troublesome to me to make the same on lands of others, either by renting or by loan:

I have diligently sought to obtain a small piece to be of my ownership, and knowing that in a place called El Tucho en la Vigu del Rio, (the Tucho on the plain of the river,) there is a piece of ground of one thousand and five hundred varas, bounded by the lands of one Manuel Castro and by that of the foreigner Tomas Coll, suitable for

the intended purpose which is vacant, and without cultivation or occupation by any one.

I pray your worship be pleased to concede it to me in ownership or otherwise, after taking the reports that you may deem proper to grant yours (report) in my favor, so that his excellency the governor may thereby accede to my petition. Therefore I pray your worship will be pleased to grant it as petitioned, whereby justice, &c., shall be confirmed upon me.

JOSE JOAQUIN GOMEZ.

Monterey, November 27th, 1843.

REFUGIO, *December 1st*, 1843.

The lands asked for are of two neophytes belonging to the Carmelite order, conceded to them by Don David Espinee, in the year 1840, but they have not worked them, and one lies in Santa Cruz and the other in San José.

From this information your worship will order it as you please.

JOSE JOAQUIN G. BUELNA.

RAMON ESTRADA, *Prefect of the first district of the department of the Californias:*

Having viewed the foregoing report, wherefrom it proves the piece of ground asked for to be lying vacant or unoccupied:

Using the powers which the laws confer on him, he concedes in ownership the same piece of ground to Don José Joaquin Gomez.

Let this present be returned to him for his safety.

JOSE R. ESTRADA.

Monterey, December 4th, 1843.

Pursuant to the foregoing decree, the judge of the town of Refugio shall mark out to Don José Joaquin Gomez the varas of land as conceded, respecting the landmarks mentioned in his petition.

Monterey, December 7th, 1843.

Filed in office March 1st, 1853.

GEORGE FISHER, *Secretary.*

Recorded in Ev. B., vol 17, page 447.

GEORGE FISHER, *Secretary.*

11 *Affidavit and notice.*

VICENTE GOMEZ *et al.* *vs.* THE UNITED STATES. } Case No. 679.

Vicente Gomez, being duly sworn, deposes and says that he is the representative of the heirs of José Joaquin Gomez, and the claimant of record in the above-entitled cause.

That on the —— day of ———, 185 , said cause was submitted under the rule, without the necessary testimony having been taken in support of his cause, which he can now produce.

That he has not sufficient means to employ an attorney in this case, and was unavoidably absent himself when the case was submitted.

This deponent now prays to have this case restored to the docket for the purpose of taking testimony, which is material to said cause, and without which he cannot safely proceed to trial; and further this deponent sayeth not.

VICENTE P. GOMEZ.

Sworn to before me and subscribed January 29th, 1855.
R. AUG. THOMPSON,
Commissioner.

Filed in office January 30th, 1855.
(Signed) GEO. FISHER, *Secretary.*

Recorded in journal, volume 4, page 195.
(Signed) GEO. FISHER, *Secretary.*

13 *Opinion of the board.*

VICENTE GOMEZ *et al.* *vs.* THE UNITED STATES. } Number 679.—Claim for fifteen hundred varas square in a place called "El Tucho," in the county of Monterey.

The claimants in this case state in their petition that they are the heirs-at-law of Don Joaquin Gomez, deceased; and that the said Joaquin had a grant of the aforesaid land issued by a prefect, and have offered in evidence a document purporting to be the grant above spoken of, but have failed to prove its authenticity, or that they are the heirs of the said Joaquin.

There is nothing before us by which we can determine that the petitioners have any rights whatever to ask for a confirmation of their claim; and a decree will be entered rejecting the same.

Rejected.

Filed in office March 27th, 1855.
(Signed) GEO. FISHER, *Secretary.*

Recorded in record of decisions, volume 2, page 576.
(Signed) GEO. FISHER, *Secretary.*

Decree.

VICENTE GOMEZ *et al.*, heirs-at-law of JOAQUIN GOMEZ, deceased, *vs.* THE UNITED STATES. } Number 679.

In this case, after hearing the proofs and allegations, it is adjudged by the commissioners that the claim of the petitioners is not valid,

14 and it is therefore decreed that his application for a confirmation of the same be denied.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office March 27th, 1855.
(Signed) GEO. FISHER, *Secretary.*

Recorded in record of decisions, volume 2, page 577.
(Signed) GEO. FISHER, *Secretary.*

And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the southern district of California, it is hereby ordered that the transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary; one of which transcripts shall be filed with the clerk of the United States district court for the southern district of California, and the other be transmitted to the attorney general of the United States.

15 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing fourteen pages, numbered from 1 to 14, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of said board, of the documentary evidence and of the testimony of the witnesses, upon which the same is founded, on file in this office, in case No. 679, on the docket of said board, wherein Vicente Gomez et al. are the claimants against the United States for the place known by the name of "land in Monterey county."

In testimony whereof, I hereunto set my hand and affix my private [SEAL.] seal, (not having a seal of office,) at San Francisco, California, this twenty-sixth day of September, A. D. 1855, and of the independence of the United States of America the eightieth.

(Signed) GEO. FISHER, *Secretary.*
Filed Oct. 4th, 1855.
16 C. E. CARR, *Clerk.*

17 *Appeal notice.*

VICENTE GOMEZ *et al.*
vs.
UNITED STATES OF AMERICA. } Case 679.

United States district court for the southern district of California.

An appeal will be taken from the decision of the United States board of land commissioners on behalf of the plaintiffs in the above-

entitled cause, wherein said plaintiffs claim from said defendants fifteen hundred varas square of land in the county of Monterey, San Francisco, May 2, 1855.

A. PACKARD,
For Claimants.

Filed May 11th, 1855.

C. E. CARR, *Clerk.*

Petition of Appellant.

In the United States district court for the southern district of California.

VICENTE GOMEZ *et al.*, appellant,
vs.
THE UNITED STATES, appellee. } No. 300.

Your petitioner, Vicente Gomez, by his attorney, appears and states that hereinbefore, to wit, on the 1st day of March, 1853, a petition was filed with the board of commissioners to ascertain and settle private land claims in the State of California, averring the rights of the heirs-at-law of the late Joaquin Gomez to the
18 tract of land described in the said petition, and alleging himself to be their representative, and that on the 27th of March, 1855, the said board of commissioners rejected said claim, and on the 11th day of May, 1855, a notice of intention to appeal from said decision was filed in this court in conformity with law, and that on the 4th day of October, 1855, a transcript of the proceedings in said cause was filed in this court.

Wherefore your petitioner prays that the decision of said board may be reviewed, and that this honorable court decree that the title of the heirs-at-law of said Joaquin Gomez be good and valid.

A. PACKARD,
Att'y for Claimant.

Filed this 8th January, 1857.

C. SIMS, *Clerk.*
P'r J. H. COLEMAN, *Dep'y.*

Answer.

In the district court of the United States for the southern district of California.—Hon. J. S. K. Ogier, judge.

VICENTE GOMEZ *et al.*, appellants,
vs.
THE UNITED STATES, appellees. } No. 300.—Trans. No. 679.

The answer of Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, to the petition for review of Vicente Gomez in the above-entitled cause, says that he denies, generally and specially, each and
19 every allegation in said petition contained; and further, he denies generally the validity of the alleged title of the petitioners and claimants; and prays that the court will affirm the deci-

sion of the board of land commissioners, and decree the alleged title of claimants invalid, and general relief.

P. ORD, *Dist. Att'y.*

Filed in office 9th January, 1857.

C. SIMS, *Clerk,*
By J. H. COLEMAN, *Dep'y.*

Summons.

UNITED STATES OF AMERICA,
Southern District of California, ss:

The President of the United States to P. Ord, United States att'y, greeting:

Take notice that a petition, a copy of which is herewith served upon you, has been filed against the United States in the district court of the United States, in and for the southern district of California, on the 8th day of January, in the year of our Lord one thousand eight hundred and fifty-seven, at the city and county of Los Angeles, in said district, by Vicente Gomez, praying said court to review the decision of the United States board of land commissioners of the 27th March, 1855, rejecting his claim to the land described in his petition to said board, situate in Monterey county, and that you are required to appear at said court in said city within ten days after the service hereof, if served on you within the county of Los Angeles, and within twenty days if served on you within the county of San Diego or San Bernardino, and within forty days if served on you in any other county of said State, exclusive of the day of service, and answer said petition, or the petitioner will apply to the court for the relief demanded therein.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Los Angeles, this 9th day of January, A. D. 1857. [SEAL.]

C. SIMS, *Clerk,*
P'r J. H. COLEMAN, *Deputy.*

I served this summons, together with a certified copy of the petition, upon P. Ord, esq., by delivering to him a true copy of the same at Los Angeles, in the southern district of California, on the 9th day of January, A. D. 1857.

EDWARD HUNTER,
U. S. Marshal,
P'r M. L. GOODMAN, *Deputy.*

Filed on return, this 9th day of January, A. D. 1857.

C. SIMS, *Clerk,*
P'r J. H. COLEMAN, *Deputy.*

Received January 9th, 1857.

EDWARD HUNTER,
U. S. Marshal,
P'r M. L. GOODMAN, *Deputy.*

1617

21 *Deposition of J. M. Bonillo.*

VICENTE GOMEZ *et al.*, appellants,
vs.
THE UNITED STATES, appellees.
} No. 300.—Lands near Monterey.

J. Mariano Bonillo, a witness on the part of the appellants, being duly sworn, deposes and answers to the annexed interrogations as follows:

Question. What is your name, age, and place of residence?

Answer. My name is José Mariano Bonillo, I am 51 years of age, and reside in San Louis, Obispo county.

Quest. Did you know one Joaquin Gomez, of Monterey? If yea, is he now alive or is he dead? If dead, who are his heirs?

Ans. I knew him; he is now dead; his heirs are his two sons and one daughter. The daughter is called Francisca; the sons are called Vicente and Ambrosio Gomez. These are the only children that he ever had.

J. MAR'NO BONILLO.

Sworn and subscribed to before me this 16th day of January, A. D. 1857.

C. SIMS, *U. S. Comiss'r.*

Filed Jan'y 16, 1857.

C. SIMS, *Clerk.*

22 *Decree of Dismissal.*

U. S. district court, southern district of California.

VICENTE GOMEZ *et al.*, appel't,
vs.
THE UNITED STATES.
} No. 300.

Now, on this day, comes the United States, by J. R. Gitchell, U. S. district attorney, and the appellant failing to appear, either in person or by attorney—

On motion of J. R. Gitchell, U. S. district attorney, it is ordered, adjudged, and decreed that this cause be, and the same is hereby, dismissed for want of prosecution, and that the decree of the U. S. board of land commissioners stand as a final decree.

ISAAC S. K. OGIER.
U. S. Dist. Judge.

Filed in office this 8th August, 1860.

C. SIMS, *Clerk.*

U. S. district court, southern district of California.

Regular June term, A. D. 1860.—Wednesday, August 8th, 1860.

VICENTE GOMEZ *et al.*, appellants,
vs.
THE UNITED STATES, appellee. } No. 300.

In this case decree of dismissal is signed in open court.

23 *Notice of a motion to restore cause.*

In the district court of the United States, southern district of California.

VICENTE P. GOMEZ *et al.*, appellants,
vs.
THE UNITED STATES, appellees. } In D. C., No. 300.—Lands in Monterey county.—Trans. No. 679.

Now comes the said appellants by their attorney, Isaac Hartman, and move the court to vacate the order of this court made and entered on the 8th day of August, A. D. 1860, dismissing this cause for want of prosecution.

And in support of this motion the appellants assign the following:

1. Because said order was made and entered without any notice of the same to the appellants or their attorney.

2. Because no notice of trial of said cause was ever served upon said appellants or their attorneys by the said appellees.

The appellants will use, upon the hearing of this motion, the papers and files in the cause, and will also examine J. R. Gitchell, esq., U. S. dist. attorney, as a witness for them.

ISAAC HARTMAN,
Att'y for Appellees.

To J. R. GITCHELL,
U. S. Dist. Attorney, S. D. California.

SIR: You will please take notice that the foregoing notice will be called on for hearing on the 20th inst., at 11 o'clock a. m. of
24 said day, or as soon thereafter as the same can be heard before said court.

Los Angeles, February 14, 1861.

ISAAC HARTMAN,
Att'y for Appellants.

Feb'y 14, 1861, received a copy of the foregoing.

J. R. GITCHELL,
U. S. Dist. Att'y.

Filed Feb'y 15, 1861.

G. L. MIX, *Clerk,*
P'r JOHN O. WHEELER, *Dept.*

N19

U. S. dist. court, southern district California.

Regular December term, A. D. 1860.—Monday, March 4th, 1861.

VICENTE GOMEZ *et al.*, appellants,
vs.
THE UNITED STATES, appellees. } No. 300.

On this day it is ordered that this cause be set for Thursday, March 7, 1861, at 11 o'clock a. m.

24½ *Order reinstating the case and granting leave to take further testimony.*

U. S. district court, southern dist. California.

Regular December term, A. D. 1860.—Friday, March 8th, 1861.

VICENTE GOMEZ *et al.*, appellants,
vs.
THE UNITED STATES, appellees. } No. 300.

Now comes the parties into court, the claimants by Isaac Hartman, esq., of counsel, and the United States by the U. S. dist. att'y. Whereupon claimant files and reads his motion to vacate the order of this court, made and entered on the 8th day of August, A. D. 1860, dismissing this cause for want of prosecution. Which motion is by the court granted, and the case reinstated upon the docket, with leave to both parties to take further testimony.

25 *Deposition of R. C. Hopkins, on the part of claimant.*

In the district court of the United States for the southern district of California.

THE UNITED STATES
v.
HEIRS OF JOAQUIN GOMEZ. } In land cases.—Dist. court, No. 300.—Land com., No. 679.

Be it remembered, that on this third day of April, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared R. C. Hopkins, a witness produced in behalf of the claimant in the above entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows; his evidence being taken by consent.

Present: Isaac Hartman, esq., counsel for claimant, B. C. Whiting, esq., counsel for the U. S.

Questions in behalf of the claimants.

Question 1st. What is your name, age, place of residence, and occupation?

Ans. My name is R. C. Hopkins; I am of lawful age; I reside in San Francisco; and am by occupation keeper of the Spanish
26 archives in the office of the U. S. surveyor general for the State of California.

2. State if you brought with you from the archives under your charge the expediente in this case, and a traced copy of the same; if so, produce them.

Ans. I have brought with me the original expediente filed by the claimants before the board of U. S. land commissioners, and here produce it; a traced copy of which I also produce, to be annexed to this deposition; to be marked, Exhibit Hopkins No. 1.

3. State what knowledge you have of the handwritings in the several parts of the expediente, and the several signatures to the same, and your opinion as to their genuineness.

Ans. I am acquainted with the handwriting of all the body of the expediente, save that of the report of José Joaquin Buelna, found on the second page. I am not acquainted with the signature of José Joaquin Gomez as found in the petition, or of the signature of José Joaquin Buelna as found in the report. The petition is in the handwriting of Francisco Arce, who, at the date thereof, was *official primero*, or chief clerk in the office of the secretary of state. The marginal order found upon the first page, referring the petition to the justice of the pueblo of Refugio, is in the handwriting of Manuel Castro. The signature thereto is in the hand of José R. Estrada,
27 who, at the date thereof, was prefect of the first district of California, and his signature to said marginal order is genuine. The grant, commencing on page 2, and ending on page 3 of the expediente, is also, I think, in the handwriting of Manuel Castro; and the signature of José R. Estrada thereto is his genuine signature. The unsigned document on page 4 is also in the handwriting of Manuel Castro.

Cross-examination.—Questions by the counsel for the U. S.

Ques. 4. Are you acquainted with José R. Estrada, and have you seen him write?

Ans. I never was acquainted with him, nor did I ever see him write. The knowledge I have of his signature is based upon the examination of documents purporting to have been signed by him, now in the archives. R. C. HOPKINS.

Deposition closed.

Subscribed and sworn to this 3d day of April, A. D. 1862, before me.

[SEAL.] W. H. CHEVERS,
U. S. Commiss'r.

Filed April 7th, 1862.

JOHN O. WHEELER, *Clerk.*

29 Sello cuarto, dos reales.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

MANUEL CASTANARES,
Sor. Prefecto del 1er Distrito.

MICHETORENA.

[SEAL.]

MONTEREY 28 de 1843.
Informe el juez del pueblo del Refugio se las tierras que se pretenden en esta instancia se hallan baldias y se pertenecen a algun particular.
ESTRADA.

José Joaquin Gomez, Mejicano por nacimiento y vecino del pueblo de S'n Bautista en este departam'to ante la justificasion de V. S. con el debido respeto y como mas haya lugar digo: que no teniendo el rancho que poseo tierras utiles para siembras y por tal motivo serare gravoso el hacer estos en terrenos agenos ya por arrendan ciertos ó yá por prestamos he procurado con empeño faltar un corto espacio que sea de sin propiedad y sabiendo que en un paraje llamado el Tucho en la Vega del Rio hay una suerte de tierra de mil quinientas varas, colindante con el terreno de Dn. Manuel Castro y con el del estrangero Tomas Cole, util para el objeto propuesta que esta valdia y sia cultivo su ocupacion por alguno pido á V. S. se sirva concedermela en propiedad, tomados los informes que crea convenientos dar el suyo á un favor para que por el acedo el
30 E. S. gobernador a mi peticion.

P. E. A. V. S. suplico se sirva proveer como pido que en ella recibiré gracia y justicia, &c.

Monterey, Nov're 27 de 1843.

JOSE JOAQUIN, *C'torriz.*

REFUGIO 1^{o} de Dec'bre de 1843.

Las tierras que se solicitan son de dos Neofitos carmelenos selas considio Dn. David Espense el año do 1840; pero ellos no lasantrapaddo, y el usu vibe en Sta. Cruz y el otro en el pueblo de S'n José con estos conosi mientos puede V. S. ordenas lo que Guste.

JOSE JOAQUIN G. BUELNA.

31 JOSE RAMON ETRADA, *Prefect del Primer Distrito del Departamento de las Californias:*

Habiendo visto el informe que antecede por el que causta hal baldia o deso cupada la suerte de tierra que se pretende, usand ode las facultades que le confieren las leyas concede en propiedad a Don José Joaquin Gomez, la misma suerte de tierra devuelva sele el presente para su resguardo.

Monterrey, D'bre 4 de 1843.

JOSÉ R. ESTRADO.

32 En consecuencia del anterior decreto el juez del pueblo del Refugio de senalara a D'n José Joaquin Gomez las varas de tierras concedias respetando los linderos que indica en su solicitud.

Monterey, D'bre 7 do 1843.

33 No. 679.—Vicente Gomez. *et al.*, 1,500 vs. square, county of Monterey.

A.—Original grant, filed in office, March 1, 1853.

GEO. FISHER. *Sec'y.*

A, P. L., exhibit to the deposition of Manuel Castro, Jan'y 31, 1855.

Recorded in book of Rec. of Ev., vol. XVI, pages 419 and 420.

34 OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, E. F. Beale, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle private land claims in California, by virtue of the power vested in me by law, do hereby certify that the five preceding and hereunto annexed pages of tracing paper, numbered from one to five, inclusive, exhibit a full, true, and correct copy of an original document, together with the indorsements thereon, as the same appear in case No. 679 on the docket of said board of commissioners.

In testimony whereof, I have hereunto signed my name offi-
[SEAL] cially, and caused my seal of office to be affixed, at the city of San Francisco, this third day of April, 1862.

(Signed) E. F. BEALE,
U. S. Surveyor General for California.

Examined and found correct.

———— ————,
Keeper of Archives.

Exhibit Hopkins No. 1, *referred to in deposition of R. C. Hopkins, taken before W. H. Chevers, U. S. Commissioner, April* 3*d*, 1862.

U. S. dist. court, sou. dist. California.

THE UNITED STATES
vs.
HEIRS OF JOAQUIN GOMEZ. } No. 300.

Filed April 7, 1862.

JOHN O. WHEELER, *Clerk.*

35 U. S. district court, southern district of California.

Intermediate term, January, A. D. 1862.—Monterey, Thursday, April 10th, A. D. 1862.

VICENTE GOMEZ *et al.*, appellants,
vs.
THE UNITED STATES, appellees. } No. 300.

In this case, on motion of the att'y for claimant, leave is granted to take testimony under the rules of this court, and cause set for hearing on the 16th inst. at 10 a. m.

Deposition of Wm. Mathews.

36 In the district court of the United States for the southern district of California.

THE UNITED STATES
vs.
HEIRS OF JOAQUIN GOMEZ. } Dist. court, No. 300.—L. C. No.

Be it remembered that on this 14th day of April, A. D. 1862, at the town of Monterey, in the southern district of California, before me, John O. Wheeler, clerk of the United States district court for the southern district of California, and *ex officio* commissioner of the United Sates for the district of California, duly authorized to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared William Mathews, a witness produced in behalf of claimants in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in California, who, being duly sworn, testified as follows:

Present: Isaac Hartman, esq., counsel for claimants, and B. C. Whiting, U. S. dist. att'y.

Questions in behalf of claimant.

Ques. What is your name, age, and residence?

Ans. My name is William Mathews; 56 years of age; and I reside in Monterey.

Ques. Were you acquainted with Joaquin Gomez in his lifetime? if so, state whether he is living or dead.

37 Ans. I was acquainted with him; he is now dead.

Ques. State whether he left a widow or children; whether they are living or dead; and what are their names.

Ans. I think he left a widow and two sons, and a daughter. I do not know the widow's Christian name. I think the name of one is Ambrosia. Both sons are living here in town. I recollect that the name of the other son is Bicente Perfecto. I do not recollect the Christian name of the daughter.

Ques. Do you know a piece of land lying on the Salinas river by

the name of "El Tucho," and owned by Joaquin Gomez at the time of his death?

(Objected to by U. S. dist. att'y—the latter part of it.)

Ans. I do know a piece of land by that name, which was called always the property of Joaquin Gomez.

Ques. State what you know concerning the settlement, occupation, cultivation or improvement of this land by Gomez by his children.

Ans. I lived adjoining the land 9 years. There was a house on it, and the whole tract was fenced. They used to sow there, raise their corn, pumpkins, beans, &c. The way that I knew it belonged to
38 Gomez, there was a Thos. Cole that lived adjoining to him. I saw Gomez come frequently during the time of sowing to look after his people who were farming on the land. For 20 years that I have known this land I have known it as the property of Gomez. I lived adjoining this place, on Capt. Cooper's farm, which adjoined it, from the year 1840 to 1849.

Cross-examination.—Questions by the U. S. dist. att'y.

Quest. Where did Joaquin Gomez reside during the 9 years which you say you lived adjoining "El Tucho?"

Ans. On the farm adjoining, Natividad, 8 or 9 leagues from Monterey, and about 4 or 5 leagues from El Tucho.

Ques. Did his wife and children live with him at the last named place, near Natividad?

Ans. His family lived there with him.

Ques. What do you mean when you say "he came there from time to time to look after his people?"

Ans. He put men there to work. I have seen him put them there to plough, sow, and cultivate. The men that he thus put there, some of them lived there 6 months, others 1 year. When they knocked off work, he would get others.

39 Ques. Have you any means of knowing whether these people were at work for themselves or for Gomez?

Ans. I suppose they were at work for Gomez, because I saw him haul away the products; that is to say, his people hauled them away to his farm.

Ques. Did you go with them to the farm?

Ans. No, sir, I did not.

Ques. Have you any positive knowledge that they hauled these products to his farm?

Ans. I suppose that they were hauled to his farm, because it was hauled by his people, and in his teams. Some of it might have been hauled into Monterey, perhaps.

Ques. Were they ox teams?

Ans. Yes. Generally in those days they used ox teams.

Ques. Had you any means of knowing his ox teams from any other?

Ans. Yes. We generally knew the teams by the brand upon the oxen; and, in fact, we did and could easily know, when we met teams upon the road, to whom they belonged.

Ques. Were you ever at his farm near Natividad?

Ans. Yes, sir, a good many times. I wish to add here that he used this place for sowing grain, because there was no sowing, or not sufficient sowing ground at his farm.

40

his
WILLIAM + MATHEWS.
mark.

Sworn to and subscribed before me this 14th day of April, A. D. 1862.

JOHN O. WHEELER,
Clerk of U. S. Dist. Court and ex officio Com'r.

Filed April 14th, 1862.

JOHN O. WHEELER, *Clerk.*

United States district court, southern district of California.—Intermediate term, January, A. D. 1862.

MONTEREY, *Wednesday, April 16th*, 1862.

VICENTE GOMEZ *et al.*, appellants,
vs.
THE UNITED STATES, appellees.
} No. 300, D. C.—"El Tucho."

Now, on this day, come the parties into court, this being the day heretofore set for the hearing of this cause, Isaac Hertman appearing in behalf of the appellants, and B. C. Whiting, U. S. dist. att'y, representing the United States. Whereupon the same was argued, and submitted to the court for final adjudication.

41 *Deposition of J. B. R. Cooper.*

United States district court, southern district of California.

VICENTE GOMEZ *et al.*
vs.
THE UNITED STATES.
} No. 300.

Be it remembered that on this 12th day of August, A. D. 1862, before me, John O. Wheeler, clerk of U. S. dist. court, south'n dist. o Cal'a, and ex officio U. S. commiss'r, duly authorized to take depositions in civil causes depending in the courts of the United States, personally appeared John B. R. Cooper, a witness produced on behalf of the claimants in the above-entitled cause, now pending in the U. S. dist. court of the south'n dist. of California, to be used as evidence in said cause, who, being duly sworn, testified as follows:

Present: David Jacks, on behalf of claimants, and B. C. Whiting, esq., U. S. dist. att'y, on behalf the United States.

Questions on behalf of claimant.

Ques. What is your name, age, and place of residence?

Ans. John B. R. Cooper. I reside in Monterey, and am 70 years of age.

Ques. How long have you resided in Monterey?

Ans. Since the year 1826.

42 Ques. Do you know a tract of land on the Salinas river called "El Tucho?"

Ans. Yes, I do.

Ques. Was there a pueblo on that tract of land or district of country, or was the tract comprised within any pueblo; and if so, what?

Ans. It was a pueblo by itself; that is, it was a tract of land parcelled out to people to live on, and was called "El Tucho" and El Refugio. This was a tract of land lying between my rancho, called Sagrada Familia, and the rancho of Nacional. It was frequently called the pueblo of Refugio. It was granted in suertes for cultivation by the prefects. It was a tract of country, about 5 miles long, between the rancho of Nacional and myself, as above stated.

Ques. How many inhabitants were there in the town or pueblo of El Tucho or Refugio in 1843?

Ans. I should think there might have been 300. There may have been 500. I do not know exactly. I know several of the people that lived there. The lands were granted and used for agricultural purposes. Many old soldiers were settled there, and small stock owners and others. It was a regulation or order of Echandea that no person holding less than 200 head of cattle could apply for or receive a cattle ranch.

43 *Cross-examination by the U. S. att'y.*

Ques. What constitutes a pueblo under the Mexican laws?

Ans. It was what we called a town. A pueblo was really people. They were established by the government. Where people could have small pieces of land to cultivate. They were constituted by an act of the legislative council.

Ques. Did it require the sanction of the governor, after the action of the legislative council?

Ans. I expect that it did, although I am not certain.

Ques. Do you know what year Refugio was constituted a pueblo by the legislative council?

Ans. I do not recollect. It was before the year 1840, I know.

Ques. Do you recollect of the act of the legislative assembly constituting this pueblo?

Ans. I recollect it as a fact of history, more than any other way. It was called the pueblo of Refugio by the people here, in Monterey, and also out there at the pueblo.

Ques. What class of people lived there?

44 Ans. They were mostly Mexicans; most that I knew had been soldiers, and their families, under the government—who had served the government.

JOHN B. R. COOPER.

Sworn to and subscribed before me this 12th day of August, A. D. 1862.

JOHN O. WHEELER,
Clerk U. S. Dist. Court S. Dist. Cal'a, and ex officio U. S. Commiss'r.

Filed Aug't 12th, 1862.

JOHN O. WHEELER, *Clerk.*

U. S. district court, southern dist. California.—Regular June term, A. D. 1862.

MONTEREY, *Wednesday, August 13th, A. D.* 1862.

VICENTE GOMEZ *et al.*, appellants,
vs.
THE UNITED STATES, appellees. } D. C., No. 300.

Now comes David Jacks, on the part of claimants, (the U. S. dist. att'y being present, and offering no objection,) and moves the court for an order substituting himself in the place and stead of the heirs of Gomez as claimants herein; and in support thereof files original deed from Felippa Juan de Gomez, wife of José Joaquin Gomez, dec'd, Vicente P. Gomez, Ambrosio Gomez, Francisca Gomez, and her husband, Alberta Soler, and Margarita Gomez, heirs of José Joaquin Gomez, dec'd, to him, the said David Jacks, for the lands claimed in this case, showing that whatever interest the said heirs had therein is now vested in him.

Whereupon it is ordered, that the said David Jacks be substituted as the party of record in this cause, in the place of the aforesaid heirs of José Joaquin Gomez, dec'd, and that all further proceedings herein be held in the name of David Jacks, claimant and appellant against the United States, appellee.

45 *Deed from Gomez et als. to David Jacks.*

This indenture, made the fifteenth day of January, in the year of our Lord one thousand eight hundred and sixty-two, between Felipa Duran de Gomez, wife of José Joaquin Gomez, now deceased, Vicente P. Gomez, Ambrosio Gomez, Francisca Gomez, and her husband, Alberta Soler, Margarita Gomez, all heirs of José Joaquin Gomez, now deceased, of Monterey, California, of the first part, and David Jacks, party of the second part, witnesseth: that the said parties of the first part, for and in consideration of the sum of six hundred dollars lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns for ever, all that certain piece or parcel of land adjoining the Salinas or Monterey river on the Salinas valley, in the place known as and called "El Tucho," and being the

same piece of land petitioned for by José Joaquin Gomez, as per petition dated Monterey, November 27th, 1843, and granted to the said Gomez by the Mexican authorities, by decree or grant dated "Monterey, December 4th, 1843," and being all that piece of land, so derived by said José Joaquin Gomez from the Mexican authorities, in the place known as and called "El Tucho," in the present county of Monterey, and occupied and cultivated by him in his lifetime; and being all that piece of land shown by the original title papers,
46 case No. 679, on the docket of the board of U. S. land commissioners, which is hereby referred to; together with all and singular the tenements, hereditaments, and appurtenances thereto belonging or in any way appertaining; and that the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, including all rents due or to be due from persons using said lands, and, also, all the estate, right, title, and interest, patent from the United States government, property, possession, claim, and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances; to have and to hold, all and singular, the above-described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said parties of the first part, their heirs, the said premises, in the quite and peaceable possession of the said party of the second part, his heirs and assigns, against the said parties of the first part, their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend against all persons claiming by, through, or under the said parties of the first part.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

FELIPPA DURAN DE GOMEZ. [SEAL.]
VICENTE PEFTO. GOMEZ. [SEAL.]
AMBROSIO GOMEZ. [SEAL.]
FRANCISCA GOMEZ DE SOLER. [SEAL.]
ALBERTA SOLER. [SEAL.]
MARGARITA her + mark. GOMEZ. [SEAL.]

Signed, sealed and delivered in the presence of
J. D. CALLAGHAN.

47 STATE OF CALIFORNIA,
County of Monterey, ss:

On this sixteenth day of January, A. D. one thousand eight hundred and sixty-two, before me, John D. Callaghan, a notary public in and for said county of Monterey, personally appeared Felipa Duran de Gomez, Vicente Pefto. Gomez, Ambrosio Gomez, Alberta Soler, and his wife, Francisca Gomez de Soler, and Margarita Gomez, each and all of them to me personally known to be the persons described

in and who exccuted the foregoing conveyance as parties thereto; and they each severally acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned; and said Francisca Gomez de Soler, wife of the said Alberta Soler, having been by me first made acquainted with the contents of said conveyance as a party thereto, acknowledged to me, on an examination separate and apart from her husband, and without the hearing of the same, that she executed the foregoing instrument freely and voluntarily, without fear or compulsion, or under influence of her husband, and that she does not wish to retract the execution of the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written. [SEAL.]

J. D. CALLAGHAN,
Notary Public, Monterey County.

Rec'd for record, Jan'y 20, '62, at 2 o'clock and 45 minutes p. m. Recorded in book of F of conveyances, page 172 and foll'g.

G. W. BIRD,
Recorder Monterey Co.

Per T. W. DAY, *Deputy.*

Filed Aug. 13, 1862.

JOHN O. WHEELER, *Clerk.*

48 *Order for substitution of parties.*

United States district court, southern district of California.—Regular June term, A. D. 1862.

HEIRS OF VICENTE GOMEZ *vs.* THE UNITED STATES. } No. 300.

Now, on motion of David Jacks, and on his filing an original deed from Felipa Juana de Gomez, wife of José Joaquin Gomez, deceased, Vicente P. Gomez, Ambrosia Gomez, Francisco Gomez, and her husband, Alberto Soler, and Margarita Gomez, heirs of José Joaquin Gomez, deceased, to him, the said David Jacks, of lands claimed in this case, showing that whatever interest the said heirs held in said lands is now vested in him, it is ordered that the said David Jacks be substituted as party of record in this cause in place of the aforesaid heirs of José Joaquin Gomez, deceased, and that all further proceedings thereon be held in the name of David Jacks, claimant and appellant, against the United States, appellees.

This done and signed in open court this 13th day of August, A. D. 1862.

Filed Aug't 13, 1862.

49 U. S. dist. court southern dist. California.—Regular June term, A. D. 1862.

MONTEREY, *August* 18*th*, 1862.

DAVID JACKS, substituted for VICENTE P. GOMEZ *et al.*, *vs.* THE UNITED STATES. } D. C. No. 300.

Now on this day, the parties appearing in court by their respective attorneys, and the said cause having been submitted, the court renders a decision therein confirming the claim of said claimants to certain lands situated in Monterey county, bounded on the northward by the lands of Simeon Castro, deceased, and on the west and southwest by the Salinas river, at the place called "El Tucho," and being a square of fifteen hundred varas, and being the same land which was cultivated by José Joaquin Gomez in his lifetime, and containing fifteen hundred varas square.

And a decree, in accordance therewith, is presented and signed by the court and filed herein, and is recorded in book A of records, page .

50 *Brief for claimants.*

VICENTE P. GOMEZ *et al.*, appellants, *ads.* THE UNITED STATES, appellees. } No. 300 D. C.—Lands in Monterey county.—No. 679 L. C.

Abstract.

On the 27th day of November, 1843, José Joaquin Gomez petitions the prefect of the 1st district, setting forth that he has no lands on his rancho suitable for sowing, and praying for the grant of the place called "Tucho," on the plain of the river, being one "suerte" of land of one thousand and five hundred varas, bounded by the lands of Manuel Castro and with that of Thomas Cole.

On the 28th day of November, Estrado, the prefect, refers the petition to the judge of the town of Refugio for information.

On the 1st day of December, 1843, José Joaquin Buelna, the "Juez," reports that the land petitioned for was then of two neophyte carmelites, conceded to them in 1840 by David Spense, in the year 1840, but that they had not cultivated it, and one of them lived in Santa Cruz and the other in Martinez.

On the 4th day of December, 1843, José R. Estrada granted the land petitioned for to José Joaquin Gomez in full property, directing the judge of Refugio to measure out to him the varas of land granted.

The commissioners rejected the claim on the ground that the authenticity of the title had not been proven, and because claimants had failed to prove that they were the heirs of the grantee.

Proof.

Trans. 3, 4, 5, 6.—Manuel Castro knows land bounded on the east by lands of Thomas Cole; on the west by lands of Castro; on

1681

51 the south by the Salinas; and on the north by the road which leads from the house and lands of Prudencia Espinosa to the lands of Trinidad Espinosa, being in a square form, and embracing 1,500 varas each way.

Proves occupation from 1843. Proves signatures of Gomez and Estrada. Was Estrada's sect'y at the time, and wrote the body of the document.

Deposition of R. C. Hopkins.

Is keeper of Spanish archives. Produces traced copy of expediente. Proves handwriting and signatures in expediente.

Deposition of William Mathews.

Proves occupation and cultivation since 1843.

Remarks.

If there be any law authorizing a prefect to grant lands, it is the act of the Mexican congress of March 20th, 1837. Article 14th of this law would seem to bear this construction; at least this was the opinion of the board of land commissioners in the case of Manuel Larias for the lands near San Juan Bautista, being case No. 325 of this court.

I have examined with some care both this case and the case of Peter Sherebeck for 800 varas square in Yerba Buena as the leading prefect grants. The grant to Larias was for a league of land, and was made by José Castro upon an order from Governor Alvarado. It purported also to be made of municipal lands. Neither of these cases, however, exactly support the case at bar, with regard to the power of a prefect to make grants. A copy of the opinion of Judge Thompson, in the case of Larias, is herewith furnished, as containing the most that can be said on this subject.

52 I base the claim for confirmation in this case, however, on purely equitable grants. The colonization laws of 1824, and the rules and regulations of 1828, confined the power to grant to "Gefes Politicos," who was sometimes the governor, sometimes the "commandant general," and sometimes the "vocal decaño," or senior member of the departmental assembly, and hence we find many grants made by these several officers.

I know of no instance when a prefect, by virtue of his office, succeeded to the office of "Gefe Po.itico"; but had there been such an instance, there could have been no doubt of his power to make grants of lands.

It was a very common practice in California for other officers than the "Gefe Politico" to receive petitions for the grant of lands. There was nothing in the colonization laws to prohibit this; and all the various steps preceding a grant by the governor, such as reference for information, receiving reports, &c., were made under the supervision of such officers. Indeed, even concessions were sometimes

made by them, but these proceedings were generally referred to the governor for his approval or disapproval.

When approved by him the grants have always been considered as definitively valid as if all the proceedings had been instituted before and carried on under the direction of the governor himself. The case for San Jones, No. 108, in this court, is a familiar illustration of this. All the proceedings in that case were before a prefect, except the grant, which was made by the governor. If the governor in the case at bar had approved the proceedings of the prefect, there could be no doubt but what our title would have been considered definitively legal title. As it is, however, the proceedings must be re-
53 garded, so far as they did proceed, as a provisional title, to be perfected by the approval of the governor. This, coupled with the continuous possession proven from 1843 until the present time, (possession once proven is presumed to continue, and we prove it until 1849,) raises such an equity as entitles us to a confirmation.

The case at bar is much stronger for claimant than was the case of Alviso, 23d Howard, 318, and to which I again invite your honor's attention.

ISAAC HARTMAN,
Att'y for Appellants.

Opinion of R. A. Thompson, referred to in claimant's brief.

MANUEL LARIOS *vs.* THE UNITED STATES. } No. 297.—Lands near San Juan Bautista, Monterey.

This is a claim for about one square league of land, and purports to be founded on a grant made by José Castro, prefect of the district, on the 4th of May, 1839, in pursuance of an order to that effect from the governor of the department, the original of which is filed in the case, and proved to be genuine. It is in proof that the claimant has occupied the premises ever since the year 1835; that he had on it a house, in which he resided with his family; stocks of cattle, sheep and horses, and portions of the land inclosed and in cultivation; which occupation has been continued up to the present time. It further appears, from the evidence, that the right of possession and ownership over the land claimed has been exercised by the
54 claimant, and recognized and respected by the adjoining landholders, and the public authorities of the department, without question or dispute, from the date of the grant up to the time the Americans occupied the country. These facts are certainly sufficient to raise a strong equity in favor of the claimant. Several legal objections are, however, raised to the validity of the grant, which we will now proceed to consider.

The first of these having reference to the absence of the usual conditions of occupation and cultivation, and the insufficiency of the description to locate and identify the land, are, in a great measure, removed by the recent decisions of the Supreme Courtupon these points. We may remark, however, on them, that the evidence shows that all

these conditions had been amply complied with prior to the making of the grant; and we find that it was a common custom of the governors of California to omit these conditions in ordering colonization grants when the fact of their prior performance by the applicant was brought to his knowledge. The description contained in that document, taken in connexion with the other evidence in the case, are also, in our opinion, sufficient to fix the location of the land, and enable the surveyor to establish its boundaries.

The confirmation of the claim is resisted on other grounds, which go to the validity of the grant itself; and as these objections have an important bearing on other cases now pending before the commission for decision, they claim from us our most attentive consideration:

1st. That if the grant is held to be the grant of the prefect,
55 by virtue of his own authority, it is invalid, because that officer did not possess the power to make grants of land; and,

2d. If it was made by virtue of the order of the governor referred to in the grant, it was equally invalid, because the latter officer had no authority to delegate to another the power of disposing of *of* the public domain, conferred on him by the laws and regulations of the supreme government.

In attempting to ascertain the precise extent of the powers and authority conferred on the public functionaries in California, by the laws of Mexico, are met with almost insuperable difficulties. The constant succession of revolutions which have characterized her history from the commencement of her political history as a nation, and the incessant change of her organic and other laws, consequent upon these political convulsions, has rendered it almost impossible to ascertain what particular system, or what laws, were in force at any one time. The authorities themselves seem to have had very vague and indefinite ideas of the nature and extent of their own powers, or of the source from which they were derived. Sometimes they refer to the Spanish constitution of 1811. and the laws of the cortes passed under it, as the authority of their official acts; sometimes to their own constitution of 1824, and the laws of Congress; and again to some special order of the supreme government.

The revolution of 1836 resulted in the destruction of the state government and the federal system, and the adoption of a new
56 constitution, which went into effect on the first of January, 1837, by which the territory of the government was divided into departments, districts, and partidos, at the head of each of which is constituted a chief executive officer.

The organic law of the 20th of March, 1837, designated the officers who shall preside, respectively, over their political divisions, and defines their powers and duties. An examination of these provisions shows that they establish a complete system of centralization, radiating from the chief executive head of the nation down to the justices of the peace of the town. It consisted—First, of the President of the republic, whose jurisdiction, in connection with the general congress, extended over the entire nation. Second. The governors of the departments and departmental juntas. Third. The prefects

of the districts. Fourth. The sub-prefects of the partidos; and fifth. The ayuntamientos and alcaldes, or justices of the peace of the towns, as their population or other circumstances entitled them to the one or the other organization.

The power of the prefects to grant the common lands of the towns is claimed to be derived from the 77th article of this law, under the head "De los prefectos," which is in the following terms: They (the prefects) shall regulate (arreglaran) executively (gubernaristámento) and conformably to the laws, the distribution of the common lands, in the towns of the district wherever there is no litigation pending in the tribunals respecting them, reserving to the parties their right to appeal to the governor, who, without further
57 recourse, will decide the matter as may be proper, with the concurrence of the departmental junta.

It is contended by the associate law agent that this section gives to the prefect no power to dispose of the public lands by grant, but simply a right to regulate and prescribe rules by which the distribution shall be governed. The first, he says, is a high prerogative; the second the subordinate executive power; and with this latter the prefect was invested by law, and with no greater authority. If the Spanish word "arreglar" meant simply to regulate, and it stood alone in the article and without qualification, the construction here contended for would be clearly a correct one; but a reference to the dictionary will show that its technical meaning—in which sense it is used here—is, "to adjust the administration of provinces and to enact laws for them.

Taking this meaning, in connection with the word gubernanatiramente, translated executively, which immediately follows, it would appear plainly to imply that the prefect was not only intrusted with the power to adopt general regulations for the distribution (repartimiento) the word generally used to signify the granting of the common lands of the pueblo,) but also with the authority to execute or carry them into effect, by granting the lands with a right of appeal to the governor and departmental junta, to whom the general administration of the public lands of the department was committed.
58 It is true that the power to grant lands is a prerogative of the government, but, like all other sovereign or prerogative powers, it can only be exercised by means of a subordinate agent; and the object of the article under consideration appears to have been to commit the administration and distribution of the common lands of the towns of the prefects, subject to the supervisory and appellate authority of the governors, in the same manner as the general disposition of the public lands of the department was intrusted to the latter. This is clearly implied by the use of the word gubernativimente. To adopt the construction of the associate law agent would make that word mere surplusage, without force or meaning; whereas, from its frequent occurrence in other parts of the law, it is very clear that it has a definite meaning. and was not used without a purpose.

An examination of this organic law of the 20th of March of 1837,

under the two general heads "de los gobernadores" and "de los prefectos," will show that the enumeration of the functions, powers and duties of the two officers were, with some exceptions, almost identical within the sphere of their respective jurisdictions; and that its general effect was to confer on the prefect the same authority over the subject-matters committed to his charge in the district, which was exercised by the governor in the department; the powers of the former, however, being exercised in subordination to and under the general supervision of the latter, to whom he was directly responsible.

The distribution of the common lands of the towns being, therefore, committed to the prefects, to administer gubernatively, or, as it might be rendered, with governmental functions, would necessarily include the power to make or refuse grants of those lands
59 in the same manner as the governor makes or refuses to make grants of the other public lands in the department, reserving in the former case the right of appeal to the governor and assembly. This construction appears also to be in accordance with that given to the law by the Mexican authorities.

The general rule laid down by the Supreme Court, in construing statutes, is to adopt the construction made by the courts of the country by whose legislature the statute was enacted.—(5th Peters, 264.) In order to ascertain the local construction of the law of Mexico, where no reports of judicial proceedings are made or published, we must look to that put upon it by those to whom the administration of the law was committed as recognized and acquiesced in by the other constituted authorities. The reason of the rule above quoted would clearly justify such a course, as, in the absence of judicial authority, it furnishes the only means by which we can ascertain the construction given to the law by the government which created it. Adopting this rule, then, it is very clear that the law we are considering conferred on the prefects the power to grant the common lands of the towns.

José Castro, who made the grant filed in this case, and Manuel Castro, whose depositions are made and filed in the case, (both of whom filled the office of prefect,) affirm the existence of this power, and that it was exercised by them on various occasions by the virtue of their office, under the authority of the constitution of 1836, and the law of March 20th, 1837. The legality and validity of the grants made by them, so far as we have been able to discover, have
60 never been called in question; and in the present case, at least the right of the grantee to the premises appear to have been generally acquiesced in by the adjoining proprietors, and were especially recognized by the authorities of the department in subsequent official acts, the evidence of which is admitted by the stipulation with the U. S. associate law agent. The construction thus put upon the law by the Mexican authorities, together with the uniform recognition and acquiescence in its correctness, is, in our opinion, equivalent to a judicial exposition of its true intent and meaning; and as such, shall be the rule of construction in the United States tribunals.

But the grant, in this case, purports upon its face to be made in obedience of an express order of the governor, and it is contended, on the part of the claimant, that this authority of the governor was sufficient to give validity to the grant, even if the prefect did not otherwise possess the power to make it. To this it is objected, on the part of the United States, that although the governor possessed the general power to make grants of lands in their respective departments, yet it was a special, personal trust, which they had no right to delegate to another. The views of the associate law agent on this question are upon general principles, and undoubtedly correct; but we much doubt whether they can with propriety be applied, in all their strictures, to the Mexican laws now under consideration. The right of substitution, or the delegation of the power to alienate the *propios* or *abitrios*, including lands as well as the other property of the towns, with the consent of the departmental junta, is expressly given in the 9th article of the law of the 20th March, 1837,
61 under the head of "de los gubernadores." The prefects were the mere creatures of the governor. They were appointed by him, were removed at his pleasure, and exercised all their functions in subjection to his authority; in the 3d section of the 63d article "de los prefectos," he is expressly enjoined to execute the orders of the governor, and from all his acts an appeal lay directly to that officer, whose decision in that matter was final. Whether, therefore, we regard the provisions of the 9th section above quoted. as an exception to the rule, or as the recognition, by implication, of a general right of substitution or delegation of his power over the subjects committed to his charge, the controlling authority over the prefects, given him by the law, would, in our opinion, authorize that officer—acting under his orders—to make such a provisional grant, as would, when coupled with the long continual occupation, and subsequent recognition by the authorities which is shown in this case, give him a right in equity to demand the legal title from the government. In either aspect of the question, we think the claimant is entitled to a confirmation, and a decree will be entered accordingly.

Filed in office, June 19th, 1855.

GEO. FISHER, *Secretary.*

Recorded in Record of Decisions, vol. 3. page 76.

GEO. FISHER, *Sec'ty.*

62 *Decree.*

In the district court of the United States, southern district of California.

DAVID JACKS, substituted for VICENTE P. GOMEZ *et als.*, appellants, *ads.*	No. 300, D. C.
	Lands in Monterey county.
THE UNITED STATES, appellees.	No. 679, L. C.

This cause coming on to be heard on appeal from the decision of the United States board of land commissioners to ascertain and settle

the private land claims in the State of California, under the act of March 3d, 1851, on a transcript of the proceedings and decision of said board, and the papers and evidence upon which said decision was founded, and the other evidence adduced by the parties before the court, and it appearing to the court that said transcript had been duly filed according to law, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed, that the decision of said board, rejecting the claim of the appellants, be, and the same is hereby, reversed, and the title of the appellants be held to be a good and valid title for the land. The land, of which confirmation is hereby made, is described as follows, to wit: situate in Monterey county, and bounded on the northward by the lands of Simeon Castro, deceased; and on the west and southwest by the Salinas river, at the place called El Tucho, and is a square of fifteen hundred varas. The said land, hereby confirmed, being the same which was cultivated by José Joaquin Gomez in his lifetime, and contains fifteen hundred varas square.

63 Thus done in open court this 18th day of August, A. D. 1862.

FLETCHER M. HAIGHT,
U. S. Dist. Judge, S. Dist. Cal'a.

Filed August 18th, 1862.

JOHN O. WHEELER, *Clerk.*

United States district court for the southern district of California.—Regular June term, A. D. 1863.

MONTEREY, *Monday, June 29th,* 1863.

VICENTE GOMEZ *et al.*, *vs.* THE UNITED STATES. } No. 300.

Now comes B. C. Whiting, U. S. dist. att'y, and moves the court for an order granting an appeal to the Supreme Court from the decision of this court.

Whereupon it is ordered that an appeal be allowed the United States to the Supreme Court of the United States from the decision of this court heretofore rendered confirming the claim herein.

64 United States district court, southern district of California.

OFFICE OF THE UNITED STATES DISTRICT ATTORNEY,
Monterey, Cal'a, June 30th, 1863.

I, B. C. Whiting, United States district attorney for the southern district of California, do hereby certify the foregoing sixty-three pages, numbered from from 1 to 63, both inclusive, to contain a full, true, and correct transcript of the record of the proceedings, and of the decision of said court, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in the office of the clerk of the United States district court for the

southern district of California, in case No. 300 on the docket of said court, wherein David Jacks, substituted for Vicente Gomez *et al.* is the claimant, against the United States, for the place known by the name of "Lands in Monterey county."

In testimony whereof, I hereunto set my hand and affix my own private seal (not having an official seal) at Monterey, this [SEAL.] the thirtieth day of October, A. D. 1863.

B. C. WHITING,
U. S. District Attorney for the Southern District of Cal.

Filed December 1, 1863.